REMARKS/ARGUMENTS

In the Office Action mailed September 1, 2004, claims 1-77, 104-105 and 107-108 were rejected under the judicially-created doctrine of obviousness-type double patenting. Claims 1-77, 104-105 and 107-108 were rejected under 35 U.S.C. 103(a). Claims 78-103 and 106 were provisionally rejected under the judicially created doctrine of obviousness-type double patenting. Claims 1-2, 4-13, 15-23, 26-27, 31-38, 40-50, 53-59, 68, 75-104 and 106-108 were rejected under 35 U.S.C. 102(e). Claims 3, 14, 24-25, 28-30, 39, 51-52, 60-67, 69-74 and 105 were rejected under 35 U.S.C. 103(a). The drawings were accepted by the Examiner.

Obviousness-type Double Patenting Rejection over U.S. Patent No. 6,258,577 in view of U.S. Patent No. 6,277,337

In the Office Action mailed September 1, 2004, claims 1-77, 104-105 and 107-108 were rejected under the judicially-created doctrine of obviousness-type double patenting over claims 1-18 of U.S. Patent No. 6,258,577 in view of Goodrich, Jr. et al (U.S. Patent No. 6,277,337).

Applicants respectfully disagree with the Examiner, and believe the rejection is improper. MPEP section 804 II B 1 states "in determining whether a non-statutory basis for a double patenting rejection, the first question to be asked is – does any claim in the application define an invention that is merely an obvious variant of an invention claimed in the patent?" The MPEP continues "[a]ny obviousness-type double patenting rejection should make clear: (A) The differences between the inventions defined by the conflicting claims—a claim in the patent compared to a claim in the application; and (B) The reasons why a person of ordinary skill in the art would conclude that the invention defined in the claim in issue is an obvious variation of the invention defined in a claim in the patent." (emphasis added) MPEP section 804 III states "a double patenting rejection must rely on a comparison with the claims in an issued or to be issued patent."

With respect to claims 1, 50, 59, 68, 104 and 107, the Office Action states: "the claims of the ('577) reference fails to teach the step of adjusting the percentage of plasma in the fluid to a desired value such as the fluid contains a plasma content of between about 0% to about 50%. More specifically, the ('577) reference fails to teach the steps of mixing the photosensitizer along with the fluid and placing the fluid in a photopermeable container as disclosed in claims 1, 50 and 104."

The Office Action states it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the method claims of U.S. Patent No. 6,258,577 to include a plasma adjustment step in order to examine the impact of the plasma adjustment step on the platelet quality post-treatment ('337, col. 23, lines 19-21). The cited section of 6,277,337 states "Factors such as energy level of UV light exposure, dose of 7,8-dimethyl-10-ribityl isoalloxazine used, as sample processing conditions were examined for their impact on platelet quality post-treatment." Claim 1 of U.S. Patent 6,258,577 is the only claim discussed in the Office Action. There is no suggestion in claim 1 of U.S. Patent No. 6,258,577 to include a plasma adjustment step. Therefore, it is believed the rejection is improper as applied to claims 1, 50, 59, 68, 104 and 107.

With respect to claims 2, 4-13, 15-23, 26-27, 31-38, 40-49, 53-58, 75-77 and 108, the Office Action states numerous sections of the specification of U.S. Patent No. 6,277,337 for various parts of a process. However, no claim of U.S. Patent No. 6,277,337 is discussed. In addition, no argument is made regarding why claims 2, 4-13, 15-23, 26-27, 31-38, 40-49, 53-58, 75-77 and 108 of the present application are merely an obvious variant of an invention claimed in a claim of U.S. Patent No. 6,277,337. Therefore, it is believed the rejection is improper as applied to claims 2, 4-13, 15-23, 26-27, 31-38, 40-49, 53-58, 75-77 and 108.

With respect to the remainder of the rejected claims (3, 14, 24-25, 28-29, 30, 39, 51-52, 60-61, 62-67, 69, 70-74, and 105) the Office Action again refers to sections of

the specification of U.S. patent 6,277,337, but does not show how the claims of the present application are merely an obvious variant of an invention claimed in a claim of U.S. Patent No. 6,277,337. Therefore, it is believed the rejection is improper as applied to claims 3, 14, 24-25, 28-29, 30, 39, 51-52, 60-61, 62-67, 69, 70-74, and 105.

Reconsideration and withdrawal of the rejection is respectfully requested.

35 U.S.C. 103(a) rejection

In the Office Action mailed September 1, 2004, claims 1-77, 104-105 and 107-108 were rejected under 35 U.S.C. 103(a) over U.S. Patent No. 6,258,577 in view of U.S. Patent No. 6,277,337. The Office Action stated the applied reference constitutes prior art only under 35 U.S.C. 102(e).

According to 35 U.S.C. 103(c), "subject matter developed by another person, which qualifies as prior art only under one or more of subsections (e), (f), and (g) of section 102 of this title, shall not preclude patentability under this section where the subject matter and the claimed invention were, at the time the invention was made, owned by the same person or subject to an obligation of assignment to the same person. As set forth in MPEP 706.02(k)(E), for an application filed on or after November 29, 1999, a showing that the prior art and the claimed invention were, at the time the invention was made, owned by the same person or subject to an obligation of assignment to the same person will overcome the rejection. To overcome the 35 U.S.C. 102(e) rejection, Applicants' Attorney of Record is submitting with this response the Statement of Common Ownership below.

Statement of Common Ownership

At the time the claimed invention of the present application 09/596,429, filed June 15, 2000, was made, and at the time the invention claimed in U.S. Patents 6,258,577 and 6,277,337 were made, actual ownership of the present application and the two listed patents was held in the name of Gambro, Inc. The inventors of the

present application and the two listed patents were under a legal obligation to assign their inventions to Gambro, Inc at the time the inventions were made.

To provide objective evidence of common ownership, Applicants submit copies of the Patent Assignment Abstract of Title for U.S. Patents 6,258,577 and 6,277,337, showing assignment of the invention from the inventors to Cobe Laboratories, Inc., and the subsequent change of name of Cobe Laboratories, Inc. to Gambro, Inc. In addition, Applicants submit copies of the Assignment and Assignment Recordation for 09/596,429, showing assignment of the invention from the inventors to Gambro, Inc.

The evidence of common ownership submitted herewith is believed to obviate the rejection. Reconsideration and withdrawal of the rejection is respectfully requested.

Provisional obviousness-type double patenting rejection over 09/962,029 view of U.S. Patent No. 6,277,337

In the Office Action mailed September 1, 2004, claims 1-77, 104-105 and 107-108 were provisionally rejected under the judicially created doctrine of obviousness-type double patenting over claims 1, 3-6, 29 and 32 of co-pending application 09/962,029 in view of U.S. Patent No. 6,277,337.

Applicants respectfully disagree with the Examiner, and believe the rejection is improper for the reasons stated above.

The Office Action stated "claims 1, 3-6, 29 and 32 of copending Application No. 09/962,029 fail to teach placing the fluid in a photopermeable container and adjusting the percentage of plasma in the fluid to a desirable value such as the fluid contains a plasma content of between about 0% to about 50%." The Office Action then continues with a verbatim discussion of various sections of the specification of U.S. Patent 6,277,337 used for the preceding double patenting rejection.

The arguments discussed above are repeated here. It is believed the rejection is improper. Reconsideration and withdrawal of the rejection is respectfully requested.

Provisional obviousness-type double patenting rejection over 10/357,599 view of U.S. Patent No. 6,277,337

In the Office Action mailed September 1, 2004, claims 1-77, 104-105 and 107-108 were provisionally rejected under the judicially created doctrine of obviousness-type double patenting over claims 1-11 and 31-18 of copending application 10/357,599 in view of U.S. Patent No. 6,277,337.

The Office Action states "the claims 1-11 and 31-38 of copending Application No. 10/357,599 fail to teach placing the fluid in a photopermeable container and adjusting the percentage of plasma in the fluid to a desired value such as the fluid contains a plasma content of between about 0% to about 50%." The Office Action then continues with a verbatim discussion of various sections of the specification of U.S. Patent 6,277,337 as used for the preceding double patenting rejection.

The arguments discussed above are repeated here. It is believed the rejection is improper. Reconsideration and withdrawal of the rejection is respectfully requested.

Provisional obviousness-type double patenting rejection of claims 78-103 and 106 over 10/357,599 view of U.S. Patent No. 6,277,337

In the Office Action mailed September 1, 2004, claims 78-103 and 106 were provisionally rejected under the judicially created doctrine of obviousness-type double patenting over claims 12-30 of copending application 10/357,599 in view of U.S. Patent No. 6,277,337.

The Office Action states "claims 12-30 of copending Application No. 10/357,599 fail to teach the following: a fluid in a container having a portion of the plasma removed, means for adjusting the plasma, a photopermeable container in fluid communication

with the means for adding the photosensitizer and means for adjusting the plasma content and means for producing selected flow rate." The Office Action then continues with a verbatim discussion of various sections of the specification of U.S. Patent 6,277,337 as used for the preceding double patenting rejections.

The arguments discussed above are repeated here. It is believed the rejection is improper. Reconsideration and withdrawal of the rejection is respectfully requested.

102(e) rejection

In the Office Action mailed September 1, 2004, claims 1-2, 4-13, 15-23, 26-27, 31-38, 40-50, 53-59, 68, 75-104 and 106-108 were rejected under 35 U.S.C. 102(e) over U.S. Patent No. 6,277,337.

Only to further prosecution, and not to be construed as agreeing with the Examiner's assessment of the reference, a Declaration under 37 C.F.R. 1.132 showing the invention is not "by another" is provided. As discussed above, at the time the inventions claimed in U.S. Patent Application No. 09/596,429 and U.S. Patent 6,277,337 were made, all inventors of U.S. Patent Application No. 09/596,429 and U.S. Patent 6,277,337 were under an obligation to assign the inventions to Gambro, Inc. Both inventors of the present application (09/596,429) are inventors of the cited reference (U.S. Patent 6,277,337). This evidence and Declaration is believed to overcome the rejection. Reconsideration and withdrawal of the rejection is respectfully requested.

103(a) rejection

In the Office Action mailed September 1, 2004, claims 3, 14, 24-25, 28-30, 39, 51-52, 60-67, 69-74 and 105 were rejected under 35 U.S.C. 103(a) over U.S. Patent No. 6,277,337.

The Office Action stated U.S. Patent No. 6,277,337 is only prior art under 35 U.S.C. 102(e) [page 23 of Office Action]. In view of the Statement of Common Ownership submitted above, the rejection is believed overcome in view of 35 U.S.C. 103(c). Reconsideration and withdrawal of the rejection is respectfully requested.

CONCLUSION

It is believed that all rejections are overcome. Reconsideration and withdrawal of all rejections is respectfully requested. If there are any issues remaining to allowance of this application, the Examiner is respectfully requested to telephone the undersigned.

This response is accompanied by a Petition for Extension of Time (two months) and the fee due ($450 for a large entity). If the amount submitted is incorrect, please deduct the appropriate amount, including the amount due for any extensions of time necessary or credit any overpayment to Deposit Account 07-1969.

Respectfully submitted,

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